IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLAGTE JURISDICTION

WRIT PETITION NO. 1943 OF 2006.

Shri Mukund Chandulal Mehta ..Petitioner
V/s
Mrs. Shantabai Jagannath Butala .. Respondent.

Mr.A.V. Anturkar with Mr. S.B. Deshmukh and Mr. Tanaji Mhatugade for the petitioner.

CORAM : DR. D.Y. CHANDRACHUD, J.

DATE : 30TH JUNE, 2006.

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. The landlord’s suit for eviction was decreed by the trial Court on the ground that the premises were needed bonafide and reasonably by the landlord’s family under Section 13(1)(g) of the Bombay Rent Act. The suit was instituted in the year 1978 and was decreed on 31st July, 1981. The appeal preferred by the tenant was dismissed by the District Judge on 12th October, 1983. The tenant’s petition was admitted by this Court on 22nd April, 1997. When the petition came up for hearing the husband of the land-lady had expired. This Court noted that the landlady contended that she needs the suit premises for setting up and starting a shop for her son and for shifting a typing institute of her daughter-in-law from the first floor to the ground

floor. According to the tenant there were two subsequent developments in the family (1) the death of the husband of the respondent landlady and (2) that premises on the first floor which had been occupied by a tenant had been vacated in the year 1986. Since the death of landlord, the son who was in employment was due to retire on 31st March, 1998, and he wanted to set up a shop. The contention of the landlady was that the premises on the first floor which were vacated by a tenant were not suitable for her daughter-in-law to conduct a typing business. The learned Single Judge of this Court passed an order of remand on 22nd April,1997 on the ground that whether the premises which were available on the first floor were suitable for conducting a typing class, and whether the need of the landlord's son was established were questions of fact. The parties were allowed to amend their pleadings and to lead additional evidence on remand. Accordingly additional evidence was adduced.

2. By a judgment and order dated 21st December, 2005, the District Judge came to the conclusion that the landlady's son was genuinely in need of the premises in order to expand the sarafi business and for carrying on

the business of utensils. The need for establishing a typing institute on the ground floor was also held to be genuine. The medical report of the doctor in respect of the daughter-in-law which advised her not to climb the stairs leading to the first floor was produced on the record. This has been accepted.

3. Counsel appearing on behalf of the petitioner submits that the Appellate Court has not distinguished between the requirement of the landlord and the issue of comparative hardship and that separate findings ought to have been arrived at on both these aspects. Counsel conceded that the need of the landlord is genuine but there are no specific findings on the issues on which this Court had earlier remanded the matter. There is no merit in the submission. The landlady's son Arun J. Butala stepped into the witness box after the order of remand and he specifically averred that the typing institute was established in 1970. The witness stated that he intends to further develop his sarafi business and that he intended to start a business of stainless steel utensils for which the space in his possession was inadequate. The reason as to why the typing institute was intended to be shifted to the ground floor was duly

explained. The findings of the Appellate Court in regard to both the questions which were to be considered on the remand of the matter are cogent and correct. The need of the landlady's son as well as the need for establishing the typing institute on the ground floor were duly explained.

4. On the issue of comparative hardship, the evidence revealed that the tenant has constructed a multi storeyed building and those premises are situated in close proximity. The tenant has his business on the ground floor of the premises in that building, and additional premises came into his possession during the pendency of the proceedings. The tenant therefore, is not in need of the suit premises and the issue of comparative hardship was rightly answered against the petitioner.

5. In these circumstances, no case for interference under Article 227 has been made out by the petitioner. The Petition is dismissed.

6. At this stage the learned Counsel appearing on behalf of the petitioner states on the instructions of

his client, who is present in the Court that the petitioner does not seek to contest the proceedings arising out of the decree for eviction any further and the petitioner accepts the decree for possession. However, Counsel states that the tenant only seeks time to vacate the premises.

7. The Petition is accordingly dismissed. The petitioner shall have time to vacate the premises until 30th November, 2006, subject to the filing of the usual undertaking within a period of two weeks from today.

(DR. D.Y. CHANDRACHUD, J.)